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COURT OF APPEALS

STATE OF NEW YORK

HOEHMANN,
Appellant,

-against-

No. 56

TOWN OF CLARKSTOWN,
Respondents.

BORELLI,
Appellant,

-against-

No. 57

TOWN OF CLARKSTOWN,
Respondent.

MATTER OF JACOBSON,
Appellant,

-against-

No. 58

HOEHMANN,
Respondent.

20 Eagle Street
Albany, New York
May 16, 2023

Before:

CHIEF JUDGE ROWAN D. WILSON
ASSOCIATE JUDGE JENNY RIVERA
ASSOCIATE JUDGE MICHAEL J. GARCIA
ASSOCIATE JUDGE MADELINE SINGAS
ASSOCIATE JUDGE ANTHONY CANNATARO
ASSOCIATE JUDGE SHIRLEY TROUTMAN
ASSOCIATE JUDGE CAITLIN J. HALLIGAN



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Appearances:

DANIEL S. SZALKIEWICZ, ESQ.
DANIEL SZALKIEWICZ & ASSOCIATES, P.C.
Attorney for Respondents
23 West 73rd Street
Suite 102
New York, NY 10023

KEVIN T. CONWAY, ESQ.
Attorney for Town of Clarkstown
7 Stokum Lane
New City, NY 10956

ROBERT A. SPOLZINO, ESQ.
ABRAMS FENSTERMAN, LLP
Attorney for Respondent (Hoehmann v. Town of Clarkson)
81 Main Street
Suite 400
White Plains, NY 10601

LAWRENCE A. GARVEY, ESQ.
LAWRENCE A. GARVEY & ASSOCIATES, P.C.
Attorney for Mr. Hoehmann
50 Main Street
Suite 390
White Plains, NY 10606

Joy Rako
Official Court Transcriber

1 CHIEF JUDGE WILSON: Good afternoon, Counsel. We
2 have three matters that we're going to hear together this
3 afternoon: Hoehmann v. Town of Clarkson - - - Clarkstown,
4 number 56; Borelli v. Town of Clarkstown, number 57; and
5 the matter of Jacobson v. Hoehmann, number 58.

6 And Mr. Szalkiewicz, if I've got your name right,
7 we're going to give you a bit more time than it shows on
8 the - - - on the sheet. So I'll save you, let's say, three
9 minutes' rebuttal time, and - - - and we'll give you a
10 little bit more time, just so it evens out more.

11 MR. SZALKIEWICZ: Thank you.

12 CHIEF JUDGE WILSON: Yep.

13 MR. SZALKIEWICZ: May it please the court, I am
14 Daniel Szalkiewicz. I represent each of the respondents in
15 the Second Department matters. The Second Department
16 wrongfully ruled that the statute of limitations did not
17 apply to a referendum issue that was raised by the
18 plaintiffs in the underlying action.

19 What ended up happening is seven years after a
20 law was enacted, the plaintiffs filed a lawsuit. There
21 were two separate and distinct causes of action. The first
22 one was that a mandatory referendum never took place. And
23 the second cause of action related to the supermajority
24 voting requirement.

25 The Supreme Court properly ruled that the statute

1 of limitations had expired because a referendum issue goes
2 not to the heart of the law but to the procedure in the way
3 it was enacted. The Third Department, in Rural Community
4 Coalition - - -

5 JUDGE GARCIA: I'm sorry. That assumes it was
6 enacted in a way, right? But isn't the argument here that
7 this is an inoperative law, so there is no enactment?

8 MR. SZALKIEWICZ: Well - - -

9 JUDGE GARCIA: So how do you measure that from
10 it?

11 MR. SZALKIEWICZ: I measure that by the fact that
12 the Town board voted for it. It was sent up to Albany. It
13 was placed into Town code. The whole purpose of initiating
14 the lawsuit by the plaintiffs/appellants to begin with was
15 because there was a law on the books that was enacted.

16 JUDGE GARCIA: Well, there is an inoperative law
17 on the books, in their view, because there's never been a
18 vote by the People, and that vote is specifically reserved
19 for the People by the Home Rule provision.

20 MR. SZALKIEWICZ: However, then you would need to
21 reconcile that every single time there is a procedural
22 infirmity, the ques - - -

23 JUDGE GARCIA: It's not a procedural infirmity.
24 So a procedural infirmity could be, you know, we're
25 counting votes in the legislative chamber, and we have a

1 rule that you're required to write down each individual
2 vote, and in this case, we did a summary. That's a
3 procedural problem. Four years go by, and nobody
4 challenges that, you come in. This is: the law isn't
5 effective under a statute because it requires a vote
6 reserved for the People. Isn't that different than we
7 didn't write down the names of each senator?

8 MR. SZALKIEWICZ: Except in order to get to that
9 point - - - I - - - well, yes. Of course that's different.
10 But if you look at P & F (sic) Tiffany Props., if you look
11 at the other mandatory referendum cases that were decided
12 by all the Appellate Divisions across the board, they ruled
13 that the challenge was too late anyway because it
14 challenged to how the law comes into existence.

15 Currently there's a law in existence in the Town
16 of Clarkstown. It's on the Town code. Nobody says this
17 law miraculously appeared there. Everyone knew how it got
18 there. To then say, well, it wasn't properly enacted,
19 which really what the argument is - - - I understand the
20 court's saying that it wasn't enacted at all. But it's
21 there. It got there somehow, and I would clearly define
22 that as being enacted. It - - -

23 JUDGE GARCIA: But what would - - - so let's talk
24 - - - what would you define as enac - - - how would you say
25 something's enacted? What's the rule?

1 MR. SZALKIEWICZ: There are steps in order to
2 enact the law. I believe a law becomes enacted when it is
3 filed in Albany and it's been localized, placed on the Town
4 books. At the end of every local law, it says enacted
5 January 21st, 2021, or wherever it may be; in this case, it
6 would be - - - it's the same as the effective date.

7 JUDGE GARCIA: So if there was never any vote in
8 the town, no one ever voted for the law, but it just showed
9 up and it says enacted, then you have four months to
10 challenge that?

11 MR. SZALKIEWICZ: Four months or six years,
12 depending on how the court looks at it, but I don't believe
13 there's ever been a case, and I don't believe this is the
14 case, where nobody ever voted on it, it just showed up to
15 date.

16 JUDGE CANNATARO: Do you have a working
17 definition of what the difference is between a procedural
18 requirement and a - - - something more than procedural?

19 MR. SZALKIEWICZ: Well, I - - - I don't - - - I
20 believe that the Court of Appeals has one, and that's when
21 it goes to the wit and wisdom of the law. I believe that
22 these nondurational statute of limitations are when it
23 actually goes to the constitutionality or the actual
24 substance of the law itself. The procedural enactment is
25 how the law has to get onto the books to begin with.

1 Now, I would assume that if for some reason a law
2 showed up in the Town of Clarkstown, somebody there, either
3 the town councilman, would actually initiate an Article 78
4 to begin with.

5 JUDGE TROUTMAN: So it doesn't matter that there
6 was no referendum in order for the law to be enacted? Is
7 that what you're saying? Despite the - - -

8 MR. SZALKIEWICZ: At this juncture, seven years
9 later, it does not matter.

10 JUDGE CANNATARO: When I look at Home Rule Law
11 23, it seems to me to affect some very fundamental aspects
12 of the citizens' relationship with their government. It
13 talks about, you know, changing terms or succession or
14 vetoes or adopting a new charter. I have a hard time
15 looking at those issues and calling them "procedural". So
16 how am I looking at this wrong? Can you readjust my
17 perception on that?

18 MR. SZALKIEWICZ: Sure. Besides, obviously, the
19 case law in the past, I think what it comes down to, the
20 difference between procedural is actually who has the right
21 to challenge a referendum requirement. I don't believe,
22 today, every citizen in the Town of Clarkstown has a right
23 to challenge that requirement. The only people that would
24 have standing to challenge under Gizzo or any other case
25 are people that resided in Clarkstown in 2014 when they

1 were supposedly denied this right to have the referendum.
2 And how can that then be something that affects the right
3 of every citizen in the Town of Clarkstown?

4 JUDGE GARCIA: The first term - - -

5 JUDGE CANNATARO: So - - - so if term limits,
6 leaving - - - excuse me, Judge.

7 JUDGE GARCIA: No, that's fine.

8 JUDGE CANNATARO: But if - - - if they
9 fundamentally change the nature of the government in
10 Clarkstown after the four-month period runs, just to be
11 clear, you're saying that's it? It's too late; you're
12 stuck with that?

13 MR. SZALKIEWICZ: Well, there is - - - obviously,
14 there's laws that people enact - - - that legislatures
15 enact all the time that citizens don't agree with, then
16 there's ways to go around doing that. One, there's - - -

17 JUDGE CANNATARO: Well, it's not constitutional.
18 I know you raised constitutionality as one of the valid
19 nonprocedural ways to attack the statute, but I - - - I
20 don't know that this rises to constitutional dimension.
21 But as I said, it fundamentally changes the nature of each
22 - - -

23 MR. SZALKIEWICZ: And you can elect a state legis
24 - - - a town councilman that believes that term limits
25 should be - - -

1 CHIEF LAW JUDGE WILSON: I want to make sure that
2 I understand your point.

3 MR. SZALKIEWICZ: Yes.

4 CHIEF LAW JUDGE WILSON: I - - - are you saying
5 that after the four months, nobody now could challenge the
6 supermajority provision, that that's time-barred?

7 MR. SZALKIEWICZ: No. I'm talking about solely
8 the referendum provision.

9 CHIEF LAW JUDGE WILSON: So there are ways that -
10 - - okay. Right. So there are ways that the - - - the
11 relationship between the - - - the Town and its citizens
12 can be fundamentally altered, that can be challenged by
13 anybody any time, some ways?

14 MR. SZALKIEWICZ: The substance of the law
15 itself - - -

16 CHIEF LAW JUDGE WILSON: Right. The substance -
17 - -

18 MR. SZALKIEWICZ: - - - not how it was enacted.

19 CHIEF LAW JUDGE WILSON: The substance of the
20 law?

21 MR. SZALKIEWICZ: Yes.

22 CHIEF LAW JUDGE WILSON: Okay. And that's - - -

23 MR. SZALKIEWICZ: And that's my - - -

24 CHIEF LAW JUDGE WILSON: And that's - - - well,
25 you confused me with standing because anybody - - - anybody

1 today would have standing to challenge the substance of the
2 law, right?

3 MR. SZALKIEWICZ: But - - - but not the
4 referendum provision. So I - - - if I was not a member of
5 the Town of Clarkstown in 2014 when the law was enacted - -
6 - I'd moved, let's say, last year - - - I don't have the
7 right to then say that, well, you denied me my right to a
8 referendum in 2014. I had no ability to go there. That's
9 what Gizzo stands for.

10 JUDGE HALLIGAN: So when you say the substance
11 can be challenged today, what exactly do you mean by that?
12 Who could bring a challenge and to what exactly?

13 MR. SZALKIEWICZ: The way that the lawsuit was
14 brought was under two causes of action. The first was that
15 no referendum took place, so therefore, the law is invalid
16 or what - - - how - - - whatever term you would like for it
17 to say. That, I believe, is a challenge to the procedure,
18 the mechanism on which this law was enacted.

19 The second cause of action was to the
20 supermajority voting requirement. I believe, and I believe
21 that the Supreme Court agreed with me, that that could be
22 deemed a valid challenge, except both the dissent at the
23 Second Department and Judge Puerto and the Supreme Court
24 level said that there is no issue having a supermajority
25 voting requirement.

1 JUDGE GARCIA: What would the remedy be if they
2 won on the supermajority requirement?

3 MR. SZALKIEWICZ: The law would be - - - well, it
4 would probably be - - - the supermajority voting
5 requirement would be deemed inactive. The law would stay
6 in place. And I imagine - - -

7 JUDGE GARCIA: So there is part of it, to Judge
8 Wilson's question, that you can't challenge now?

9 MR. SZALKIEWICZ: But you can - - -

10 JUDGE GARCIA: You'd only be challenging the
11 supermajority provision.

12 MR. SZALKIEWICZ: Can I challenge term limits at
13 this point? I - - -

14 JUDGE GARCIA: Right.

15 MR. SZALKIEWICZ: - - - if - - - no, but at the
16 same time, if I was no longer a member - - - if I came here
17 - - - sorry. Once again, using the example, I moved to
18 Clarkstown in 2020. Ten, twenty years ago, a member of the
19 board decided they wanted to do term limits. There was a
20 referendum enacted. I'm still - - - I have the same
21 issues. I still cannot challenge term limits.

22 CHIEF LAW JUDGE WILSON: But there's not - - -
23 there's not a present challenge to term limits in this
24 litigation?

25 MR. SZALKIEWICZ: There isn't.

1 CHIEF LAW JUDGE WILSON: There is not?

2 MR. SZALKIEWICZ: There is not.

3 CHIEF LAW JUDGE WILSON: It's just as to the
4 supermajority provision?

5 MR. SZALKIEWICZ: It is.

6 CHIEF LAW JUDGE WILSON: So then can you go to
7 the merits of that?

8 MR. SZALKIEWICZ: So the supermajority provision
9 relies on - - - or the challenge to it relies on Municipal
10 Home Rule that says that any act has to be done by at least
11 a majority of, the way that the plaintiff said, by a
12 majority of, and it's our position - - -

13 CHIEF LAW JUDGE WILSON: And the Town Law says
14 something different?

15 MR. SZALKIEWICZ: The Town Law says four to one
16 vote, supermajority. And it's our position - - -

17 CHIEF LAW JUDGE WILSON: No, I'm sorry. That's
18 the local law.

19 MR. SZALKIEWICZ: Oh, Town Law - - - yeah, Town -
20 - - I'm sorry.

21 JUDGE CANNATARO: It's majority plus one.

22 MR. SZALKIEWICZ: Town Law 63 says that by - - -
23 by a majority of the members.

24 CHIEF LAW JUDGE WILSON: So you have a difference
25 in two statutes: one that says a majority; one that says

1 at least a majority. How do you reconcile that?

2 MR. SZALKIEWICZ: I reconcile that's a floor, not
3 a ceiling, that in order to look at Municipal Home - - -
4 Rule 10, which says that - - - that pretty much, local town
5 boards can rule the way they want to, this clearly goes to
6 how a town board is going to have its governance, the
7 voting requirement. That would mean, then, that you - - -
8 the question is whether or not one town - - - this rule
9 supersedes or is incompatible with both the Municipal Home
10 Rule or the Town code. And because we're saying it's a
11 floor, because saying it's a minimum - - -

12 CHIEF LAW JUDGE WILSON: I guess my question is
13 why - - - why do you think it - - - if you have an
14 explanation at all, that the legislature used two different
15 wordings if they meant the same thing?

16 MR. SZALKIEWICZ: Well, I - - - I don't believe
17 they meant the same thing. I believe that the Municipal
18 Home Rule relates to any sort of enactment that was in
19 place. And I don't believe that by saying "a majority" it
20 means solely a majority. I believe that - - - obviously,
21 the point is that two members of a board cannot rule. So
22 to say - - -

23 CHIEF LAW JUDGE WILSON: Well, I guess, let me
24 ask it this way. Suppose both statues said "at least a
25 majority". Would there be any difference in meaning to the

1 way it reads now?

2 MR. SZALKIEWICZ: No, I don't believe so. It'd
3 obviously be clearer, but I don't believe that it'd be any
4 different. And then the real question is does the state
5 legislature intend to tell the Town of Clarkstown board how
6 they can repeal a law, by what vote power? And I don't
7 believe there's anything to ever indicate that the state
8 intended to supersede or to make any ruling over how town
9 boards can repeal a law.

10 CHIEF LAW JUDGE WILSON: So what if - - - what if
11 the town board said that the supermajority provision - - -
12 sorry - - - that the - - - the term limit provision can't
13 be repealed at all?

14 MR. SZALKIEWICZ: Then - - - but - - - so - - -
15 and then the question is whether or not that violates it.

16 CHIEF JUDGE WILSON: Um-hum.

17 MR. SZALKIEWICZ: I don't believe it would under
18 the law.

19 CHIEF LAW JUDGE WILSON: That wouldn't violate
20 the majority provision?

21 MR. SZALKIEWICZ: That's correct.

22 CHIEF LAW JUDGE WILSON: So they'd be free to do
23 that, too?

24 MR. SZALKIEWICZ: They would be free to do that.

25 JUDGE HALLIGAN: And under your theory, nobody

1 could ever challenge that after four months had run; is
2 that right?

3 MR. SZALKIEWICZ: The challenge - - - well, they
4 could continuously challenge that part of it because we're
5 not talking about the referendum. I - - - I believe that
6 it's very important to segregate out the two causes of
7 action, the same way that, what I said below, if I was to
8 sue somebody for a breach of contract claim five years out
9 and also include a defamation claim that was outside the
10 statute of limitations, you don't have the ability to bring
11 in the statute of limitations that expired.

12 Thank you.

13 CHIEF LAW JUDGE WILSON: Thank you.

14 MR. SPOLZINO: Good afternoon, Your Honors. May
15 it please the court, my name is Robert Spolzino, and I
16 represent the respondent in the first proceeding today.

17 The law at issue here is not effective today, was
18 not effective yesterday or eight years ago because it was
19 never enacted. The Municipal Home Rule law requires two
20 steps for the law to be enacted, and this specifically
21 provides that if those two steps don't occur, the law is
22 inoperative.

23 CHIEF JUDGE WILSON: Why aren't those procedural
24 steps?

25 MR. SPOLZINO: Because they go not to the way in

1 which the law was enacted; they go to whether it was
2 enacted at all.

3 I - - - I - - - I'm sorry, Judge Rowan - - - or
4 Wilson.

5 CHIEF JUDGE WILSON: No, I mean - - - but any
6 defect in the procedure by which a law is enacted arguably
7 renders the law invalid, no?

8 MR. SPOLZINO: It - - - it renders it - - - I - -
9 - well, let me back up. I believe that this procedural
10 substantive dichotomy, which, as you probably know, I was
11 involved in developing, has run into a dead end. It's run
12 into the case that nobody anticipated. The - - - the other
13 aspects of the law, other - - - the procedural things are
14 steps that you take in enacting - - - in taking the act
15 that creates the law.

16 JUDGE HALLIGAN: So what would that include, for
17 example?

18 MR. SPOLZINO: Sending out notice, having a
19 public hearing, following SEQOR, if there was a - - - a SEQOR
20 - - - if the law required SEQOR compliance, things like
21 that, those steps. But they don't include the town - - -
22 the - - - the vote of the town board, for example.

23 JUDGE RIVERA: Why? Why doesn't it include the
24 procedure to set up the referendum which, of course, never
25 happened?

1 MR. SPOLZINO: Because there's a - - - there's a
2 distinction between the act itself and the procedural steps
3 that are necessary to take that act.

4 JUDGE RIVERA: By the act, you mean the law?

5 MR. SPOLZINO: I'm sorry?

6 JUDGE RIVERA: The act, you mean the statute, the
7 law?

8 MR. SPOLZINO: Right.

9 JUDGE RIVERA: Okay.

10 MR. SPOLZINO: The - - - if - - - if the Town
11 Board never voted, nobody would be here saying this law was
12 valid. In this kind of a law, two steps - - -

13 CHIEF JUDGE WILSON: Well, what if the Town vote
14 never - - - Town never voted and it was put to a referendum
15 and the people adopted it?

16 MR. SPOLZINO: It would still be invalid.

17 CHIEF JUDGE WILSON: And you would say that
18 there's no statute of limitations to challenge it?

19 MR. SPOLZINO: Correct. I'm not - - - I'm not
20 sure how that would happen, but - - -

21 CHIEF JUDGE WILSON: You could go a hundred years
22 and - - - well, it might, right?

23 MR. SPOLZINO: I - - - I don't - - -

24 CHIEF JUDGE WILSON: The chair forgot to call a
25 vote and there wasn't a vote taken, the minutes didn't

1 reflect it, but they sent off a referendum and - - -

2 MR. SPOLZINO: I - - - I guess that's - - -

3 CHIEF JUDGE WILSON: I mean, I'm not sure how
4 this happened.

5 MR. SPOLZINO: I guess that's conceivable, Judge
6 Wilson. But here, there's no dispute. The referendum - -
7 - one of the two acts that is necessary to make this law a
8 law never happened.

9 JUDGE GARCIA: Is there a time limit on when you
10 can hold a referendum after the law is passed by the - - -
11 the government?

12 MR. SPOLZINO: My recollection is that it's - - -
13 my recollection is that it's a complicated - - - it's a
14 complicated process depending upon when you enact the law
15 or when you - - - when the town board acts in relation to
16 when the next election is. If it's so many days before the
17 election, you have to put it on the general election. If
18 it's so many days after - - - something like that. It's -
19 - - that's - - - that's what - - -

20 JUDGE GARCIA: But there are time limits?

21 MR. SPOLZINO: There are time limits. So that's
22 what - - - that's what defines it.

23 CHIEF JUDGE WILSON: And so if I understand you
24 correctly, when you say we've sort of run into a dead end
25 here in terms of what the law anticipated, you're in some

1 ways advocating a third category? That is, this isn't
2 really substantive and it's not procedural; it's something
3 else?

4 MR. SPOLZINO: I - - - that's right. If it's - -
5 - of course - - -

6 CHIEF JUDGE WILSON: Because, I mean, you'd
7 agree, right, that it has - - - that the question of
8 whether there was a referendum or not is - - - it's
9 completely agnostic to what the substance of this law was?

10 MR. SPOLZINO: Right.

11 CHIEF JUDGE WILSON: It could have been about
12 fishing just as easily as - - - right?

13 MR. SPOLZINO: Well - - - well, you probably
14 wouldn't need a - - - a mandatory referendum - - -

15 CHIEF JUDGE WILSON: Right.

16 MR. SPOLZINO: - - - on a fishing law. But the -
17 - - that's the point, that I think what happens is - - -
18 and - - - and respectfully, this happens with judicial
19 drift at all courts - - - is that you define - - - you try
20 to find the defining principle, which is what the P & N
21 Tiffany case did, and say, well, there's procedural and
22 there's substantive. And then the question - - - then
23 something comes up that doesn't fit neatly into those
24 categories.

25 I mean, you could define "substantive" as

1 including the acts themselves, but that's probably not what
 2 was generally meant by "substantive". What was meant by
 3 "substantive" was some sort of invalidity such as the
 4 noncompliance with Section 63 of the Town Law and Municipal
 5 Home - - - Rule Law, was procedural, at least in those
 6 cases, was defined by steps.

7 JUDGE CANNATARO: What is it that makes this not
 8 neatly fitting into the category of either procedural or
 9 substantive? Is it something specific to the nature of - -
 10 - of referendums or - - - because, you know, I'm - - - I -
 11 - - the only point of reference I have is - - - is SEQOR
 12 review, and I'm trying to understand what distinguishes
 13 what happened in that case versus what's happening in this
 14 case.

15 MR. SPOLZINO: Well, in SEQOR - - - in - - - in
 16 the SEQOR cases - - - in the case the Court of Appeals
 17 decided on this issue, the law itself was still voted on.
 18 The legislative body didn't do one of the things that it
 19 had to do in order to do that. But it still voted on the
 20 law. And this is where I think the distinction is. Okay?
 21 The other cases had to do with - - -

22 JUDGE CANNATARO: So it's - - -

23 MR. SPOLZINO: - - - sending out notice.

24 JUDGE CANNATARO: - - - some voting act? So - -
 25 - because I'm - - -



1 MR. SPOLZINO: It's - - -

2 JUDGE CANNATARO: - - - trying to - - - I'm
3 trying to craft a rule off of your argument. Could we say
4 that it's - - - that that category of cases that resides
5 with one foot in both procedural and substantive would be
6 the ones that require referenda, or is it broader than that
7 or narrower than that?

8 MR. SPOLZINO: It may. I - - - I'd have to go
9 back and look at the entire list, so I can't say
10 specifically. But I think - - - I think it's not - - - I
11 think when you talk about substance, we're generally
12 talking about what the words are and what the words do.
13 We're not talking about how the law came to be. We're more
14 - - - more - - - closer to talking about how the law came
15 to be is the procedural steps.

16 But the distinction between procedure and what's
17 at issue here is that none of those steps that have been
18 found to be procedural and therefore subject to the form of
19 statute of limitations involve doing the deed itself.
20 There are things that should have been done in order to do
21 the deed, the adopt - - - the enactment of the law, but
22 they're not the enactment of the law itself. The - - - the
23 mandatory - - - the referendum is an integral part. It's
24 one of the two acts that the statute defines as having to
25 occur. It's - - - it's arguably the more important one - -

1 -

2 JUDGE RIVERA: So - - - so - - -

3 MR. SPOLZINO: - - - because it's - - -

4 JUDGE RIVERA: So then, under your analysis,
5 there's no need to consider whether or not there's a
6 continuing harm?

7 MR. SPOLZINO: Well, I - - - I think the answer
8 is that this is a continuing harm - - -

9 JUDGE RIVERA: Okay.

10 MR. SPOLZINO: - - - in the sense that the law's
11 invalid today. The law was never enacted. This lawsuit
12 seeks a declaration that the law was never enacted. It's
13 not operative. It's not effective. It's unenforceable
14 because it never was. And that's true today. It was true
15 six years ago. It's true - - -

16 JUDGE RIVERA: Well, the reason for that is a - -
17 - a particular step is not followed, and then we're back to
18 whether or not that step - - - step goes to the procedural
19 aspects or perhaps some substantive aspect. So - - -

20 MR. SPOLZINO: And that's - - -

21 JUDGE RIVERA: So - - - but - - - but who is
22 harmed, in your view?

23 MR. SPOLZINO: I think the - - -

24 JUDGE RIVERA: Or what?

25 MR. SPOLZINO: I think the people who didn't get



1 to vote for it are harmed.

2 JUDGE RIVERA: Originally?

3 MR. SPOLZINO: Originally. I think the people
4 who don't get to vote for a candidate today who they might
5 like to - - -

6 JUDGE TROUTMAN: How is it continuing, though?

7 MR. SPOLZINO: What's that?

8 JUDGE TROUTMAN: When you say "continuing", what
9 do you mean by that? Who is it continuing to harm?

10 MR. SPOLZINO: It's continuing to harm the voters
11 of the - - - of - - - the electors of the Town of
12 Clarkstown.

13 JUDGE TROUTMAN: Does it have to be the same set
14 of voters?

15 MR. SPOLZINO: I - - - respectfully, I would say
16 no. It's - - - they are all being harmed because a law
17 that doesn't exist is being applied to bar a person from
18 running for office that they might want to - - -

19 JUDGE RIVERA: What about the town board?

20 MR. SPOLZINO: - - - the voters might want to
21 choose.

22 JUDGE RIVERA: What about the town board and the
23 person who doesn't want to be term limited?

24 MR. SPOLZINO: Town board members?

25 JUDGE RIVERA: Are they harmed in a particular

1 way that's relevant to the analysis or - - -

2 MR. SPOLZINO: Sure.

3 JUDGE RIVERA: - - - are we only looking at
4 voters?

5 MR. SPOLZINO: No. Town board members,
6 candidates. They're - - - they - - - town board members
7 who would be subject to this are harmed.

8 CHIEF JUDGE WILSON: So somebody - - -

9 JUDGE SINGAS: And if we conclude - - - sorry.
10 If we conclude that a continuing harm theory doctrine, we
11 don't accept it, does it matter what the statute of
12 limitations is in this case, whether it's four months or
13 six years?

14 MR. SPOLZINO: Well, in the sense that the law -
15 - -

16 JUDGE SINGAS: Is that even relevant?

17 MR. SPOLZINO: In the sense that lawsuit was
18 brought up more than six years, in that sense it doesn't
19 matter. But I - - - I - - - I would suggest, Judge Singas,
20 that the law can - - - a law that's not enacted can't be
21 barred - - - a lawsuit to declare a law that was enacted -
22 - - not enacted can't be barred by a statute of
23 limitations. That would - - -

24 JUDGE HALLIGAN: That's what - - - go ahead.

25 MR. SPOLZINO: That would allow a law to come

1 into existence merely by the passage of time without the
2 votes of the people that had to vote on it.

3 JUDGE HALLIGAN: So that's what I'm struggling
4 with. Is your position that continuing harm has to be
5 shown but that there is continuing harm necessarily
6 demonstrated into the forever future because your argument
7 is the law was never duly enacted?

8 MR. SPOLZINO: Yes.

9 JUDGE HALLIGAN: Okay.

10 MR. SPOLZINO: The law - - -

11 JUDGE HALLIGAN: And why exactly is it that
12 that's true here as opposed to the more conventional
13 analysis of continuing harm where I have to show that
14 something is, you know, accruing day after day, time after
15 time?

16 MR. SPOLZINO: Well, because - - - because it is
17 accruing time after time. It's applying every day. It's -
18 - - it's treating - - - it's enforcing a law that was never
19 enacted. If a law - - - if a law barring theft had never
20 been enacted - - -

21 JUDGE RIVERA: But isn't that the same outcome if
22 - - - if you just have a law that didn't follow the proper
23 procedure but the time runs out? Now it's on the books and
24 people are subject to it.

25 MR. SPOLZINO: Be - - - because the procedural

1 steps are different, respectfully, Judge Rivera, than the
2 act itself.

3 CHIEF JUDGE WILSON: The - - - the difficulty I'm
4 having sort of, sorry, from - - - from a policy point of
5 view is that there is a purpose behind of statute of
6 limitations, and some of that has to do with a loss of
7 information over time. And it - - - at least as I'm - - -
8 so if you - - - I mean, now we're talking about continuing
9 injury, but unless a statute has absolutely no practical
10 application today that nobody cares about it, it doesn't
11 affect anybody, a statute is always going to have some
12 continuing harm in the sense you mean it, which really
13 means that a statute that was enacted 150 years ago, if
14 somebody can go back and prove that, let's say, there was
15 no referendum or the vote didn't occur that was supposed to
16 occur, that can be wiped off the books even though people
17 have been abiding by that statute and expect it, that it
18 exists, which seems a little unorthodox.

19 MR. SPOLZINO: Well, I think the situation's
20 unorthodox, Judge Wilson. I don't think this happens a
21 lot. There's not a lot of - - - there's no - - - I don't
22 even know if there's any precedent on this. But it - - -
23 it goes back to the fact, you know, without regard to or -
24 - - or even after taking into consideration the policy
25 concerns that you're - - - you're raising, that the act



1 never happened. The law was never adopted. So how can you
2 enforce it?

3 If - - - if there was no law against theft and
4 someone tried to prosecute someone for theft, you - - - I
5 don't think you'd say, oh, well, you know, we can prosecute
6 you because it's - - - it's been on the books for a long
7 time, if a legislature had never adopted it. That's the
8 situation here. The legislative body never adopted this
9 law. I shouldn't say that. The voters never adopted this
10 law. They had - - - one - - - they had - - - one of the
11 two integral steps here was theirs. It never happened.
12 The law is invalid, and therefore - - - the law is invalid
13 because it never was enacted, not because of some
14 procedural step: because it never happened.

15 JUDGE RIVERA: But isn't that really a
16 constitutional claim that hasn't been made?

17 MR. SPOLZINO: Well - - -

18 JUDGE RIVERA: Isn't that really about a
19 constitutional problem?

20 MR. SPOLZINO: I - - - I think it's akin to a
21 constitutional claim.

22 JUDGE RIVERA: You can't - - - you can't have a
23 law on the books that - - - that hasn't been enacted in a
24 particular way as a constitutional matter. That - - - that
25 - - -

1 MR. SPOLZINO: Well - - -

2 JUDGE RIVERA: - - - really resonates with me.
3 That - - - that's what it sounds like you're really
4 arguing.

5 MR. SPOLZINO: I agree that that is akin to a
6 constitutional matter, that you can't - - - that - - - that
7 laws require - - - laws don't get enacted without being
8 enacted. Laws can't be enforced without being enacted.

9 JUDGE RIVERA: Um-hum.

10 MR. SPOLZINO: The more immediate claim, though,
11 is that the procedure here is defined by the legislature
12 and the Municipal Home Rule law, and that's why we're
13 relying on the Municipal Home Rule law for - - - as the - -
14 - the standard. The Constitution says - - -

15 JUDGE GARCIA: In what way - - - and I'm having
16 trouble fitting this into this - - - as you say, this
17 procedural substantive, you know, framework, is this is so
18 different because in that case where you have a procedural
19 requirement, seems to me that the People have delegated
20 that authority to set that process to the legislature. In
21 this case, the People, through their state representatives,
22 have retained the authority to vote on this. So it's not
23 the process that they've delegated and then it becomes a
24 government action and a process in enacting the law that
25 they challenge, whether by a legislative body or delegated

1 to an executive agency, but it is the retained power of the
2 people to vote, and that seems to be - - - not to fit into
3 a procedural framework at all.

4 MR. SPOLZINO: I agree. And perhaps the dis - -
5 - the category you were looking for, Judge Garcia, earlier
6 is if the People have to vote on it and the People don't
7 vote on it, it ain't law. And that's the situation here.
8 That's why it's different than any of those procedural
9 steps.

10 If you're talking about SEQOR or notice or things
11 like that - - -

12 JUDGE GARCIA: But the point, I think, is - - -

13 MR. SPOLZINO: - - - those are things - - -

14 JUDGE GARCIA: - - - a little bit more
15 fundamental than that. It's those things you've all
16 delegated to either the legislature or an agency to do, and
17 if they don't do them, there are procedural steps they have
18 to take. You can challenge that in a certain way. But
19 this was a power that, through the representatives in
20 Albany, the people retain, and that was to vote on this.
21 And that, to me, doesn't seem like a procedural step
22 subject to an Article 78 proceeding.

23 MR. SPOLZINO: I - - - I think that's correct.
24 And - - - and just to go a little bit further, those other
25 things are things that one might decide are not worth

1 litigating about because they missed some notice step or
2 they missed some procedure or could. But no one out there
3 can - - - can absolve the process, if you will, of not
4 having the People vote when the People are entitled to
5 vote. That's the - - - the bottom line here as far as I'm
6 concerned. It doesn't - - - the - - - the nonenacted law
7 doesn't magically become an enacted law by the passage of
8 time. And that's the fundamental argument here.

9 CHIEF JUDGE WILSON: Thank you.

10 MR. SPOLZINO: Thank you.

11 MR. CONWAY: Good afternoon. I'm Kevin Conway.
12 I'm the deputy town attorney for the Town of Clarkstown. I
13 have a slightly different perspective. But I'd like to
14 start where counsel finished.

15 The - - - I had argued at the oral argument for
16 the Appellate Division - - - and the court picked up on it,
17 and they put it in their decision - - - the sanctity of the
18 right to vote. That's really what's at issue here. So
19 whether we talk about procedural versus substantive on the
20 constitutional side, that's - - -

21 JUDGE CANNATARO: I'm sorry. Which right to vote
22 are you talking about? The right to vote for the candidate
23 of your choice or the right to vote for the enactment of a
24 - - -

25 MR. CONWAY: Both.

1 JUDGE CANNATARO: - - - town law?

2 MR. CONWAY: Both in this case because - - - and
3 the court picked up on it. In the decision, they said,
4 "Rather, it affected the rights of the future members of
5 the Town Board" - - - that's one issue - - - "and the
6 public and the sanctity of the right to vote."

7 Because what took place back in 2014, the law was
8 passed but without - - - without public referendum. When
9 we were in front of Judge Puerto, she ruled that the
10 statute - - - four-month statute applied, and she threw in
11 a paragraph saying that the law was passed on a valid basis
12 by a simple majority, but she ignored Rule 23, which has
13 mandatory. If you're going to shorten or lengthen an
14 elected term of office, the public has the right to rule on
15 that. The public may have determined that they didn't want
16 term limits. They may have determined that they did.

17 The other thing that - - - when that law was
18 passed on an invalid basis, they failed as the local town
19 board to declare that they were going to supersede the Town
20 Law 63 and put in the supermajority requirements.

21 So there's two problems with this law. The
22 biggest, to me, it's a voting rights issue that the public
23 never got to weigh in, and the public now, since this whole
24 case started, is very confused because term limits was
25 upheld. Term limits was then repealed because before Judge

1 Puerto decided this case, the Town Board met, realized the
2 invalidity of the law, and repealed it on a simple majority
3 vote. They went back to Judge Puerto and said, put the bad
4 law back on the books, and she did.

5 The Appellate Division agreed with my position
6 that it was a bad law; it was invalidly passed; it should
7 be stricken. It was, and now they're back here again
8 before this panel - - -

9 CHIEF JUDGE WILSON: When the - - - when the Town
10 Board - - -

11 MR. CONWAY: - - - to say, put the bad law back
12 on the books a second time.

13 CHIEF JUDGE WILSON: When the Town Board repealed
14 the law recently, did they put that to a referendum?

15 MR. CONWAY: No. They - - - by simple majority -
16 - -

17 CHIEF JUDGE WILSON: So - - -

18 MR. CONWAY: - - - because it was already as a -
19 - - a current law.

20 CHIEF JUDGE WILSON: Well, they were changing the
21 term limits again when they repealed the prior law.

22 MR. CONWAY: They weren't - - - they just
23 repealed it because they saw that it was an invalidly
24 passed law in the first place. So that was their basis,
25 because they had a three-hour hearing.



1 JUDGE CANNATARO: But under Home Rule 23, I - - -
2 I think this might be what Chief Judge Wilson is referring
3 to - - - under Home Rule 23, a law that changes a term of
4 office - - -

5 MR. CONWAY: Um-hum.

6 JUDGE CANNATARO: - - - is a mandatory subject of
7 referendum.

8 MR. CONWAY: Right.

9 JUDGE CANNATARO: So wouldn't the repeal suffer
10 from the same infirmity as the original enactment?

11 MR. CONWAY: No, because they recognized in the -
12 - - the public hearing, which was about two to three hours
13 - - - everyone spoke, members of the public - - - they
14 specifically referenced the invalidity of the underlying
15 law. And when we were before - - -

16 JUDGE HALLIGAN: But - - -

17 MR. CONWAY: - - - the Appellate Division,
18 invalid laws are struck down all the time. That's not
19 unusual, and this - - - every department, including the
20 Court of Appeals, has invalidated laws at various times.
21 So that's not so unusual that it can never be done, because
22 that's what the appellants wish this court to take the
23 position - - -

24 JUDGE RIVERA: Irrespective of whether or not the
25 claim is subject to a statute of limitations?

1 MR. CONWAY: Yes. And there's - - - I haven't
2 seen anything that says an invalid law stays on the books
3 forever with regard - - - even with regard to statute of
4 limitations.

5 JUDGE RIVERA: I don't know that you're going to
6 get - - -

7 MR. CONWAY: And here - - -

8 JUDGE RIVERA: I don't know that you're going to
9 get a judge saying that.

10 MR. CONWAY: Well, no, but here - - -

11 JUDGE RIVERA: But in terms of the cases that
12 you're referring to, do they involve claims that have gone
13 - - - have - - - have been asserted many, many years after
14 the law's been enacted?

15 MR. CONWAY: There was no statute of limitations
16 issues. This case is kind of unique - - -

17 JUDGE RIVERA: Yes.

18 MR. CONWAY: - - - and - - - and for a lot of
19 reasons. But no, not specific with regard to the statute.
20 But again, this - - - it smacks of more substantive, and
21 because it deals with voting rights, and when you look at
22 Home Rule 23, it's so basic that there's six - - - five or
23 six categories including this one where you must - - - not
24 permissive, you have the option, mandatory - - - must have
25 a - - -

1 CHIEF JUDGE WILSON: I mean, when you say
2 substantive because it deals with voting rights, it seems
3 to me you're making a - - - you're trying to make a
4 classification about importance as equivalent to
5 substantive. And at least on the substantive procedural
6 dichotomy, that's not the way I think about substantive,
7 right?

8 MR. CONWAY: No. And I would say when I first
9 became involved in the case, it is very unusual, but as - -
10 - the more time one spends on it, you come - - - you tend
11 to come to that conclusion, that it was passed invalidly on
12 two bases: not declaring the supermajority provision and
13 not having - - - the - - - the bigger issue is not having
14 the public having the opportunity to vote, and they still
15 don't. And they watched this rollercoaster ride go on from
16 when this case started to where we are now, and - - -

17 CHIEF JUDGE WILSON: Well, but I think there's no
18 question the supermajority provision is - - - can be
19 challenged now, right?

20 MR. CONWAY: Well, I think it - - - it was
21 challenged, and it was - - - it was dismissed. It was - -
22 - I'm sorry. It was repealed.

23 CHIEF JUDGE WILSON: But on - - - well, now,
24 that's a - - - that's a legislative action. I mean, the
25 courts cons - - - considered it. I don't think that

1 anyone's arguing that - - - that the statute of limitations
2 bars us from considering the proper interpretation of the
3 Town Law and the Municipal Home Rule Law.

4 MR. CONWAY: No. And this court could rule with
5 regard to, not the first part of the case, but - - - and
6 the Appellate Division had the option to rule on the latter
7 part of the case that, you know what, the Town repealed it.
8 They had the ability to. So that's the end of it. They
9 could have done that. They didn't. They - - - this court
10 still could because my position is there's no restriction
11 or time bar on the repeal of it, and it was repealed. And
12 it's - - -

13 JUDGE HALLIGAN: So to - - -

14 MR. CONWAY: - - - appropriate for the
15 legislature to do that.

16 JUDGE HALLIGAN: - - - to go with that - - -

17 JUDGE RIVERA: It was properly repealed even
18 though it wasn't a majority plus one?

19 MR. CONWAY: Correct.

20 JUDGE HALLIGAN: And I'm still now trying to
21 understand why you think that requirement doesn't apply to
22 the repeal of a referendum, I mean.

23 MR. CONWAY: If it had been a valid law and
24 validity passed with a supermajority provision, then I
25 would agree, but it wasn't. And we know it wasn't for two

1 bases, for two reasons. And the - - -

2 JUDGE HALLIGAN: But - - - but it seems to me
3 that - - - that the - - - the members of the board or the
4 community - - - I'm not sure that they can make a
5 determination about whether the law has legal validity. It
6 seems to me probably a court has to do that. So how is it
7 that their view that the law was - - - if I'm understanding
8 you - - - that the law was invalid, why does that enable
9 them to then disregard the referendum requirement?

10 MR. CONWAY: Because the - - - because the
11 supermajority provision wasn't properly passed the first
12 time. Had the referendum been done and had the public
13 voted for it, had they declared themselves almost as lead
14 agency, saying we're going to preempt State Law 63 by
15 having supermajority provision in this law including term
16 limits, then I would agree. But they didn't do either. So
17 there's nothing to prevent the legislature from curing,
18 just like courts can cure - - -

19 JUDGE RIVERA: But what - - - - what are you
20 curing? If it's invalid, what are you repealing?

21 MR. CONWAY: They're repealing the law that was
22 on the books.

23 JUDGE RIVERA: But if it's invalid - - - I mean,
24 I think this in part what - - -

25 MR. CONWAY: Um-hum.

1 JUDGE RIVERA: - - - Judge Garcia was asking
2 about before - - -

3 MR. CONWAY: Um-hum.

4 JUDGE RIVERA: - - - and - - - and the argument
5 that's being made is not a proper enactment, so what are
6 you repealing? Don't you have to repeal a properly enacted
7 law? What's - - - the exercise of repealing is because
8 you're trying to abolish the authority that goes behind the
9 original enactment.

10 MR. CONWAY: Well, you're - - - you're repealing
11 the improperly enacted or un - - - invalid law. And that's
12 what the legislature has the ability to enact and they have
13 the ability to repeal. The courts have the ability, just
14 like the Appellate Division. They distinguish the other
15 decisions. They have the ability to knock out a prior
16 decision or distinguish. It's the normal process. It's
17 not the - - - the end of the world, from the appellant's
18 view, if that were to happen.

19 JUDGE RIVERA: Do - - -

20 MR. CONWAY: It's normal.

21 JUDGE RIVERA: Do - - - do you know sort of
22 what's the window now for the board of elections? I mean,
23 to - - -

24 MR. CONWAY: Oh, the - - -

25 JUDGE RIVERA: - - - make sure they have whatever

1 decision they need to be able to proceed - - -

2 MR. CONWAY: Yeah, no. That - - - that process
3 is still ongoing - - -

4 JUDGE RIVERA: - - - further?

5 MR. CONWAY: - - - because the parties that wish
6 to - - - and Mr. Garvey can speak to Candidate Hoehmann and
7 perhaps the other candidates - - - but parties that wish to
8 run carried petitions and did so. Parties that didn't wish
9 to did not. And interestingly - - -

10 JUDGE RIVERA: But in terms of printing up the
11 ballots and absentee ballots and knowing what names to have
12 on them, what sort of - - - what's their window for this?

13 MR. CONWAY: Oh, that's already been done, so I
14 believe his candidate already has that done, so that's not
15 - - - that won't be affected, as a practical matter, by
16 this court's decision. And it's been very expedited up to
17 now, including - - -

18 CHIEF JUDGE WILSON: Doesn't that depend on what
19 the decision is?

20 JUDGE RIVERA: Yeah.

21 MR. CONWAY: What's that?

22 CHIEF JUDGE WILSON: Doesn't that depend - - - I
23 mean, do they have to reprint the ballots, perhaps?

24 MR. CONWAY: No, I don't - - - I don't - - - I
25 don't know that they've - - - that's the case. If they do,

1 they do. But that's a small - - - that - - - that should
2 be - - - the practical side, in my opinion, shouldn't
3 matter.

4 JUDGE CANNATARO: Are you saying our decision in
5 this case, even if it were issued this afternoon, would be
6 academic?

7 MR. CONWAY: No. What I'm saying is I don't
8 think that that - - - and I - - - that part I can't speak
9 to, but I don't think that should be a consideration or
10 that, as a consideration, would make a difference with
11 regard to the - - - the legal issues we're discussing.
12 That's all.

13 So my - - - my perspective is it was an invalid
14 law when it was first passed. The voters got shortchanged.

15 JUDGE GARCIA: It's not really an invalid law,
16 right? I mean, it's an inoperative law. It's not invalid.
17 They didn't do anything wrong by doing what they did. They
18 just didn't do the next thing to make it operative. So how
19 does that affect our analysis?

20 MR. CONWAY: Because the - - -

21 JUDGE GARCIA: It's not invalid.

22 MR. CONWAY: Well, because the voters didn't get
23 their say. That's - - - that's the big difference. And
24 this is such an important issue, which the cases talk
25 about, binding future boards to what they can do or can't

1 do and binding the voters to what they can or can't do.
2 That's - - - that's the - - - to me, is the real issue in
3 the case.

4 Thank you.

5 CHIEF JUDGE WILSON: Thank you.

6 MR. GARVEY: Thank you. And may it please the
7 court, my name is Lawrence Garvey, and I am the attorney
8 for Mr. Hoehmann, the - - - the respondent here today on
9 the Article 16 Election Law action.

10 If I could answer the court's first question
11 about timing of the ballots, it's my understanding - - - I
12 can't make an absolute representation of this - - - it's my
13 understanding that at least in Rockland County, in our
14 board of elections, they are waiting for this decision
15 because this is the only thing that's holding up the
16 ballot. They had some deadlines this week, but they have
17 some room to - - - to adjust, right? But it - - - it is -
18 - - they are waiting for this decision.

19 JUDGE RIVERA: So - - - so you don't know how
20 much - - - what that window is?

21 MR. GARVEY: I - - -

22 JUDGE RIVERA: We can all assume this is not a
23 three-week process - - -

24 MR. GARVEY: No, it's days.

25 JUDGE RIVERA: - - - on our side?

1 MR. GARVEY: It's days, Your Honor. That's my
2 understanding. Yes, correct.

3 JUDGE RIVERA: Okay.

4 MR. GARVEY: And I don't really have a whole lot
5 to add that - - - to what we've seen here except I - - - I
6 - - - a thought just occurred to me that one of the
7 questions was, you know, it's - - - is it operative? Is it
8 nonoperative? And it is operative today because Mr.
9 Hoehmann was - - - was - - - was thrown off the ballot,
10 essentially, because of this law. It's the first time it
11 was interpreted. It was the first time it was applied. It
12 was the first time it was - - -

13 JUDGE GARCIA: I mean, legally inoperative
14 because we've said that before that if you don't do the
15 referendum process, then it's - - - it's an inoperative law
16 waiting to become operative, meaning it shouldn't have any
17 effect.

18 MR. GARVEY: But it did have an effect, and that
19 is that Mr. Hoehmann was not allowed to remain on the
20 ballot.

21 JUDGE HALLIGAN: That's what we're here to
22 determine.

23 MR. GARVEY: No, I know.

24 JUDGE HALLIGAN: Isn't that right?

25 MR. GARVEY: Yes. Right. I just wanted to make

1 that clarification, and I'm happy to answer any other
2 questions that the court has.

3 Thank you.

4 CHIEF JUDGE WILSON: Thank you.

5 MR. SZALKIEWICZ: I think, briefly, the concept
6 that the voters were retained the authority to vote on this
7 statute, the question when it comes to the statute of
8 limitations as the Court of Appeals has always held is
9 could've this been determined within an applicable time
10 frame?

11 Let's assume the court said this is an Article 78
12 which should have been done under declaratory judgment,
13 that would leave a six-year statute of limitation. The - -
14 - the thought that this only became in effect because Mr.
15 Hoehmann is about to be term-limited out - - - I would
16 argue that it came into effect once he was elected to his
17 second term because, at that point, he knew he could never
18 run for another office. That was within the six years of
19 the statute of limitations. It could have been brought at
20 that point in time.

21 What the appellant's counsel said was the
22 procedure is defined by the Municipal Home Rule Law.
23 Again, we use that phrase "procedure". It is a process for
24 something to take place. The concept of the public hearing
25 - - - there was a public hearing when this law was enacted.

1 Nothing was done secretive.

2 I think it's important to think, though, about
3 the broad spectrum implications of this decision because
4 there are multiple other Second Department, Third
5 Department decisions that talk about the validity of or the
6 - - - sorry - - - the timing to challenge when an - - -
7 when an actual referendum was required to be held.

8 At this point, according to anyone's
9 interpretation on - - - on the respondent's side, I guess,
10 at this level, you can just ignore the law. You can do
11 whatever you'd like, or now any law can be challenged
12 because an action - - - a referendum did not come into
13 play.

14 And if there's no further questions, thank you.

15 CHIEF JUDGE WILSON: Thank you.

16 (Court is adjourned)

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C E R T I F I C A T I O N

I, Joy Rako, certify that the foregoing transcript of proceedings in the Court of Appeals of Hoehmann v. Town of Clarkstown; Borelli v. Town of Clarkstown; Matter of Jacobson v. Hoehmann, No. 56, 57, 58 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



Signature: _____

Agency Name: eScribers

Address of Agency: 7227 North 16th Street
Suite 207
Phoenix, AZ 85020

Date: May 22, 2023

